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OFFICE OF PETITIONS

In re Application of	:	DECISION ON APPLICATION
Ameae Walker	:	FOR
Application No. 09/065,330	:	PATENT TERM ADJUSTMENT
Filed: April 23, 1998	:	
Atty Docket No. 2500.097US2	:	

This is a decision on the "PETITION TO CORRECT PATENT TERM ADJUSTMENT HISTORY UNDER 37 C.F.R. § 1.705(b)," filed August 12, 2004. Applicant contends that the Office incorrectly calculated both the Applicant delay and the Office delay for the patent term adjustment. Nonetheless, applicant agrees with the initial determination of patent term adjustment under 35 U.S.C. 154(b) of "0" days.

The request for correction of the calculation of the patent term determination at the time of the mailing of the Notice of Allowance is **GRANTED** to the extent indicated herein. The reduction for applicant delay has been increased from one hundred thirty-seven (137) days to **two hundred sixty-three (263) days**.

The Office has updated the PAIR screen to reflect that the Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is zero (0) days, including a reduction of **263** days for applicant delay. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On June 3, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 0 days. On August 12, 2004, applicant filed the instant petition including a request for correction of the Office delay and an advisement to the Office of an error in their favor in the calculation of applicant delay.

The request for reconsideration of the period of adjustment for Office delay is not timely filed, and must be dismissed. PALM records indicate that the issue fee payment was received in the Office on July 30, 2004. No filing of an application for patent term adjustment preceded the payment of the Issue Fee. The period for filing an application for patent term adjustment

requesting reconsideration of the initial determination of patent term adjustment at the time of mailing of the notice of allowance ended July 30, 2004. Accordingly, to the extent the instant application requests reconsideration of the entry of 0 days of adjustment under § 1.705(b), it is appropriate to dismiss this petition as untimely filed.

However, as to the period of reduction, applicant discloses that the application has been accorded more adjustment than applicant is entitled. A review of the record confirms that any patent term adjustment should have been subject to a further reduction pursuant to § 1.704(b) of 55 days, the number of days, beginning on April 9, 2003, the day after the date that is three months after the date of mailing of the final rejection mailed January 8, 2003, and ending on June 2, 2003, the date the request for continued examination was filed.

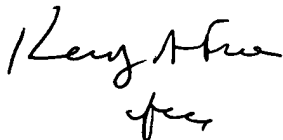
Moreover, applicant's response filed January 20, 2004 had an omission (§1.135(c)). (A notice of non-responsive amendment was mailed on April 8, 2004). A reply correcting the omission, a revised Sequence Listing, was filed on March 31, 2004. Accordingly, pursuant to § 1.704(c)(7), the period of adjustment should have been reduced by 71 days, the number of days beginning on the day after the date the reply having an omission was filed, January 21, 2004 and ending on the date that the reply or other paper correcting the omission was filed, March 31, 2004.

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance is 0 days, including 0 days of Office delay and 263 days of applicant delay.

As this letter was submitted as an advisement to the Office of an error in Applicant's favor, the Office will not assess the \$200.00 application fee under 37 CFR 1.705(b). The Office thanks applicant for their good faith and candor in bringing this to the attention of the Office.

The application file is being forwarded to the Office of Patent Publication for timely issuance of the patent.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.



Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen